

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

FILED/ACCEPTED
JAN - 7 2009
Federal Communications Commission
Office of the Secretary

In the Matter of)	MB Docket No. 08-214
)	
Herring Broadcasting, Inc. d/b/a WealthTV,)	File No. CSR-7709-P
Complainant)	
v.)	
Time Warner Cable Inc.)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a WealthTV,)	File No. CSR-7822-P
Complainant)	
v.)	
Bright House Networks, LLC,)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a WealthTV,)	File No. CSR-7829-P
Complainant)	
v.)	
Cox Communications, Inc.,)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a WealthTV,)	File No. CSR-7907-P
Complainant)	
v.)	
Comcast Corporation,)	
Defendant)	
)	
NFL Enterprises, LLC,)	File No. CSR-7876-P
Complainant)	
v.)	
Comcast Cable Communications, LLC,)	
Defendant)	
)	
TCR Sports Broadcasting Holding, L.L.P.,)	File No. CSR-8001-P
d/b/a Mid-Atlantic Sports Network,)	
Complainant)	
v.)	
Comcast Corporation,)	
Defendant)	

To: The Commission
January 7, 2009

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**SUPPLEMENTAL NOTICE IN SUPPORT
OF EMERGENCY MOTION FOR STAY AND
EMERGENCY APPLICATION FOR REVIEW**

Defendants Comcast Corporation and Comcast Cable Communications, LLC (collectively, "Comcast"), Time Warner Cable Inc., Cox Communications, Inc. and Bright House Networks, LLC (collectively, the "Defendants") hereby respectfully submit this Supplemental Notice in support of the Emergency Motion for Stay and the Emergency Application for Review, filed by Comcast on behalf of all Defendants on December 30, 2008, with a supporting statement by the remaining Defendants on December 31, 2008, and with supplements by Comcast on January 2, 2009. The emergency filings sought Commission intervention to reverse the Media Bureau's attempt to revoke the jurisdiction of Chief Administrative Law Judge Richard Sippel over these cases and to stay future Media Bureau action pursuant to its December 24, 2008 *Memorandum Opinion and Order* (the "*Christmas Eve Order*") and its December 31, 2008 *Memorandum Opinion and Order* ("the "*New Year's Eve Order*").

In keeping with the Defendants' responsibility pursuant to Section 76.6 (a)(6) to assure "the continuing accuracy and completeness of all information" in a pending complaint proceeding, this Supplemental Notice advises the Commission that Chief ALJ Sippel issued an *Order* on January 6, 2009, that is directly relevant to the emergency filings. In his *Order*, Judge Sippel continues to assert jurisdiction over these proceedings by requiring all parties to file a report and proposed schedule for further proceedings before Judge Sippel by 4:00 PM, January 7, 2008. Judge Sippel's *Order* is attached as Exhibit A. As explained below, Judge Sippel's *Order* serves to further emphasize why

immediate action on Defendant's stay request is essential to avoid potentially inconsistent and conflicting decisions.

The *Order* is relevant to the Defendants' emergency filings because Judge Sippel is proceeding (correctly, in Defendants' view) on the legal basis that he retains jurisdiction over these cases and intends to require the parties to comply with discovery and procedural orders issued in the designated hearing and to prepare for testimonial hearings. At the same time, the Media Bureau suggested in the *Christmas Eve Order* that it would proceed with a separate, abbreviated process (of some sort) to resolve what everyone agrees are complex and disputed factual issues.

The Media Bureaus' *Christmas Eve Order* and *New Year's Eve Order*, if allowed to go into effect, would create a parallel, conflicting adjudication process over the same complaints, the same parties, and the same issues. Not only is this untenable for all parties, but it also violates the due process rights of the Defendants who would have to comply with conflicting, simultaneous proceedings while seeking to defend against the Complainants' claims before both decision makers. Simultaneous adjudications of the same cases before different decision makers in the same agency is fundamentally at odds with rational and fair adjudication under the Communications Act and the Administrative Procedure Act. It also presents a highly unusual administrative spectacle, not to mention an unnecessary waste of government and private resources that will end up slowing down the ultimate adjudication of these cases. The potential for inconsistent obligations, rulings, and results cannot be overestimated. Moreover, the Media Bureau's unlawful actions – and the Complainants' actions in response thereto – have already delayed the ALJ's orderly adjudication process. Allowing parallel adjudications of the same cases to

proceed would severely compromise the Commission's credibility and raise serious doubts about its ability to control its own proceedings.

These circumstances present the strongest possible case for an immediate stay of the Media Bureau's *Christmas Eve Order* and *New Year's Eve Order* and any further action the Media Bureau might take in connection with the cases until the Commission finally resolves the jurisdictional issues. The Media Bureau's attempt to revoke the jurisdiction of Judge Sippel has created an inherent conflict that only the full Commission can resolve.

Accordingly, the Defendants urge the Commission to consider the *Order* in granting the relief requested in the Emergency Motion for Stay and the Emergency Application for Review.

Respectfully submitted,

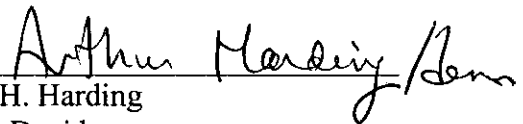
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Dated: January 7, 2009

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 09M-01

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ORDER

Issued: January 6, 2009

Released: January 6, 2009

There being petitions to the Commission to stay unpublished Media Bureau termination orders released 24 and 31 December 2008 (*DA 08-2805*; *DA 08-2819*), raising issues *inter alia*, of *ultra vires*, issues that now are before the Commission and ripe for resolution, expedited discovery and procedural dates previously set require and deserve compliance by all parties, especially those parties seeking expedited adverse findings and substantive relief.

Accordingly, non-government parties SHALL FILE by 4:00 pm on January 7, 2009, Status Reports¹ concerning:

- (1) *Protective Order* – date for filing an agreed protective order.
- (2) *Document Discovery* – categories of documents and dates requested, documents produced, documents objected as to production, reasons for objections, intentions to produce.
- (3) *Deposition Discovery* – names of persons noticed for deposition, expected testimony, names of persons still to be noticed for deposition, expected testimony, expected dates for depositions.
- (4) *Expert Discovery* – names and expert qualifications (summarized) of each testifying expert who has been retained, status of exchange of expert statements, dates for each expert's deposition.
- (5) *Pending Motions* – specify pending motions before Commission and Media Bureau, relief sought, dates of filing, status of pleading cycles including dates for replies, expected dates for decisions.
- (6) *Proposed Procedural and Hearing Dates* – new dates proposed for expediting discovery, completion of exchanging documents and testimony, and dates for commencing hearing.²
- (7) *Completion of Hearing* – date expected for record to close, and dates expected for filing proposed findings and conclusions, including drafts of recommended decisions.

SO ORDERED.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

¹Two Joint Reports would be appropriate: one for plaintiff complaining parties, and one for defendant parties. The Enforcement Bureau should file Comment by 4:00 pm on 8 January 2009.

²See Revised Procedural and Hearing Order, FCC 08M-53, released December 15, 2008.

³Courtesy copies of this Order e-mailed to counsel at noon on date of issuance.

CERTIFICATE OF SERVICE

I, Cynthia Forrester, hereby certify that a true and correct copy of the foregoing Supplemental Notice In Support Of Emergency Motion For Stay And Emergency Application For Review was sent by first class U.S. mail, postage prepaid, except where hand-delivery is indicated, on this 7th day of January 2009 to the following:

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* By hand delivery